Fed Up Initiative

Regulatory Relief Proposals

December 2001

Committee on Education and the Workforce
U.S. House of Representatives

DRAFT

FED UP

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	Regulation	Statutory Authority	Suggested Amendment and/or Regulation	Rationale	Disposition
1	**Accrediting Agencies - 602.15**		Provide for waiver authority of the "representatives of the public" requirement for agencies. This would be at the discretion of the Secretary of Education.	A member of the public is not necessarily a "representative of the public." A great deal of time and effort is sometimes needed to find a person willing to devote the time to serve and to participate. Agencies should be able to apply for a waiver of this requirement with ED to determine if such a waiver is appropriate.	
2	**Accrediting Agencies 602.17 (b)**		Review the relevance of a "self-study".	There is concern over the costs-benefit of this study.	
3	**Accreditation** **602.14 and 602.3** **602.22**	Subpart H 496	Delete from 602.3 definition of "representative of the public" the phrase "member of the governing board." The regulations should be revised to permit the accrediting agency to outline reasonable circumstances that would necessitate a visit to an off-campus site, and then provide evidence that it applies the guidelines for determining off-site reviews.	To be recognized by the Secretary, accrediting agencies must include on their governing board at least one "representative of the public." The regulations implementing this provision are narrowly drawn and prohibit accrediting bodies from using anyone who sits on the board of a college or university as a "public representative." Very often, those who serve or who have served on the boards of colleges and universities bring a wealth of knowledge and experience to the discussions of the accrediting commission. Current regulations require that an accrediting agency conduct an on-site review of all of an institution's off-campus programs within six months of the initiation of each program if a student can obtain at least 50 percent of his/her credit toward a degree at that site. Although this has been altered so that agencies do not have to visit the sites under some circumstances, the requirement for the visit should be based on the agency's determination of the need to visit the individual campus and not a blanket federal regulatory mandate.	
4	**Eligible Lender: 682.200 (b)**		Amend section (2)(ii) of the definition of lender in 682.200(b) by adding the following: "<u>For purposes of this subsection, loans held in trust are not considered part of the institution's consumer credit function."</u>	The HEA states that a lender, as defined in 435 (d)(1)(A), "does not have as part of its primary consumer credit function the making or holding of loans made to students under this part…". Section 682.200(b) of the regulation states, "The phrase does not have as its primary consumer credit function the making of loans to students under this part." In section 435(d) of the HEA states that the lender does not, or in the case of a bank holding company the company's wholly owned subsidiaries as a group,	

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				do not at any time, hold FFELP loans that total more than one-half of the lender's or subsidiaries' combined credit loan portfolio, including home mortgages held by the subsidiaries. Some originators and holders make loans through a trustee arrangement. The trust department and consumer credit departments are separate entities and are subject to different reviews and oversight. We propose that the regulations clarify that loans held in trust are not part of the consumer credit function. We want the conference report language codified in regulations. The Conference Report for the 1998 HEA Amendments states: • The House bill, but not the Senate bill, requires all loans made or held as trustee, including consumer loans, to be considered when determining the primary consumer credit function. • The House recedes. The conferees urge the Department when interpreting the rule relating to a lending institutions primary function, to consider the role of trust departments in today's banking environment. In particular, the Department is encouraged to consider the distinction between loans made and held by a lender that are clearly part of the institution's primary consumer function, and loans that are merely held in trust on behalf of another originating lender and are clearly not part of the institution's primary consumer function.	
5	**Electronic Process** **General**		The Department of Education should provide broad authority permitting electronic transmission of authorizations whenever the regulations state that an authorization should be provided "in writing." When signatures are required, i.e., FAFSA, promissory note, acceptances or authorizations by the student or parent should be permitted to be acknowledged electronically. If signatures are required for enforceability of a document, such as a	Despite a few changes made last year, current regulations still contain a number of instances that require students to be notified in writing either by the institution or lender in the case of loans. In addition, students or parents are often required to provide an authorization in writing with a "wet signature." For instance, institutions are required to provide notices to students of the amount of funds that the student or parent can expect to receive under Title IV. Students or parents must provide written authorizations for Title IV funds to be used for other institutional charges in addition to tuition and fees, and students must make written requests for deferments, cancellation, or forbearance.	

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			promissory note, electronic signatures should be permitted.	Electronic transmissions have become common modes of delivering and transmitting information. Students have come to expect electronic communications as a normal practice. Institutions that participate in Title IV must meet certain minimum technical specifications in order to use the Department of Education's electronic processes. President Clinton signed into law in June 2000 the Electronic Signatures in Global and National Commerce Act, which removed the legal barriers to acceptance of electronic signatures. Further, the Government Paperwork Reduction Act (GPEA) signed into law in October 1998, requires Federal agencies to allow individuals and entities that deal with the agencies the option of submitting information or transact with the agency electronically, when practicable.	
6	**Electronic Process - 675.19(b)(2)(i)**		Permit the use of electronic time systems as alternatives to paper time records signed by a supervisor for FCWS.	The regulations require that the student's supervisor sign the time record. This requires a paper record that does not permit institutions to use electronic time systems that are in general use in the workplace. Institutions that have been permitted to use electronic systems for this purpose (under the Experimental Sites authority) report that their reporting accuracy has increased, therefore, schools should be able to use paper or electronic systems.	
7	**Electronic process – administrative:** **668.165(a)(3)(ii)**		Modify receipt requirement for notices/authorization sent electronically. Amend the section as follows: (a)(3)(ii) Either in writing or electronically. ~~If the institution sends the notice electronically, it must require the recipient of the notice to confirm receipt of the notice and must maintain a copy of that confirmation.~~	Institutions are under no obligation to confirm receipt of-or maintain records of-letters delivered by the United States Postal Service. Requiring more documentation of the electronic process than the paper process thwarts efforts to achieve efficiencies in this area. Electronic mail should be held to the same status as the mail delivered by the USPS, since there is no evidence that the delivery of electronic mail is less reliable. In addition, students are becoming more computer-savvy, and are demanding that institutions provide notices electronically. Technology should not create added burdens	
8	**Electronic Process – administrative**		Permit the use of electronic time systems as alternatives to paper time records.	The regulations require that the student's supervisor sign the time record. This requires a paper record that does not permit institutions to use electronic time systems that are in general use	

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	in CWS: **675.19(b)(2)(i)**			in the workplace. Institutions that have been permitted to use electronic systems for this purpose (under the Experimental Sites authority) report that their reporting accuracy has increased, therefore, schools should be able to use paper or electronic systems.	
9	**Prior Award Year Charges:** **668.164(d)(2)(ii)**		Section 668.164(d)(2)(ii) should be amended as follows: (ii) ~~Minor p~~ Prior award year charges ~~if these charges are less than $100 or if~~ as long as the payment of these charges does not, and will not, prevent the student from paying his or her current education costs.	It is recommended that the ability to apply aid to charges incurred in prior years should not have a dollar restriction. Most institutions' receivable systems apply payments to the oldest charges, and do not discriminate between past due and current charges. Amending this would allow institutions some discretion to allow students to continue their attendance in school and graduate, as opposed to having to stop their studies until their debt has been paid.	
10	**Perkins** **Negotiated rulemaking: 674.31 and 674.33**	Part E Sections 461-470	In light of its importance to low-income student borrowers who rely on Perkins capital and the institutions that manage the distribution and collection of these loans, we recommend that ED be instructed to undertake negotiated rulemaking on the regulations governing the program.	The Perkins Loan program is exceptionally valuable. It has existed in a variety of forms for more than 40 years, and is the oldest federally supported student aid program to offer low interest rates to student borrowers. Over its history, however, the Federal Perkins Loan program has been amended repeatedly by Congress. It is often the guinea pig for new ideas about student loan disbursement and collections. Many deferment and cancellation benefits that affect a handful of borrowers have been added to the program over the years. This has made efficient management of the program difficult for schools and requires cumbersome and redundant paperwork by borrowers. Given the operational complexity, the presence of institutional revolving funds on many campuses, and ED's modest interest in reforming the program, the regulations are badly in need of streamlining and operational revision.	
11	**Perkins** **Monthly Payment Coordination:**		Allow institutions to determine whether students with loans from multiple institutions are eligible for multiple monthly payment coordination and require students to initiate request.	It can be very difficult for institutions to know when and how to coordinate with other institutions unless notified by the borrower. The current language in the promissory note implies that this will happen without the borrower's intervention. As a practical matter, the schools involved won't know that the borrower is eligible or	

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	674.33(b)(2)		Amend 674.33(b)(2) as follows: (2) Minimum *monthly repayment of loans from more than one institutions*. If a borrower has received loans from more than one institution <u>and the borrower has initiated the coordination of a minimum monthly repayment</u>, the following rules apply:…	desires this option unless the borrower informs the institutions.	
12	**Perkins Promissory Note:** **674.31(a)(1)**		Section 674.31(a)(1) should be amended as follows: *(a)Promissory note*. (1) An institution may use only the promissory note that the Secretary provides. The institution may make only nonsubstantive changes, such as changes to the type style or font, <u>changes that reflect the institution utilizing the note, such as the institution-specific information</u>, or the addition of items such as the borrower's driver's license number, to the note.	While the Higher Education Act of 1965 sets forth the terms that must be included in the Perkins Loan Program promissory note, it does not require that institutions of higher education "use only the promissory note that the Secretary provides." Although it is important to have a uniform promissory note, the changes above would provide institutions with flexibility in using the promissory notes and allow them to adjust the documents to better reflect their needs and interests.	
13	**Perkins** **Promissory Notes** **674.42(a)(10)**		The regulation now requires an institution to provide a copy of the promissory note at the exit interview. Offer institutions the option of providing another copy of the promissory note to all borrowers during the exit interview or only providing another copy of the promissory note to a borrower when the borrower makes such a request. Amend the section as follows: (10) A copy of the borrower's signed promissory note <u>if requested by the borrower</u>.	In addition to extensive information in other forms, institutions are currently required to provide copies of the promissory note to students at various points in the process: one when the note is signed and one at the exit interview. We believe the benefit of this is questionable and recommend offering the student the opportunity to request a copy at the exit interview. This recommendation does not diminish the substance of the information that borrowers would receive, which includes outstanding balance, payment requirements, and a borrower's rights and responsibilities.	

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14	**Perkins Late Charges** **674.43(b)(2)**	464(b)(1)(H)	Make assessment of late charges optional instead of mandatory. Part 674.43(b)(2) should be amended as follows: (2) Subject to § 674.47(a), the institution may ~~shall~~ assess a late charge for loans made for periods of enrollment beginning on or after January 1, 1986, during the period in which the institution takes any steps described in this section to secure-- (i) Any part of an installment payment not made when due, or (ii)A request for deferment, cancellation, or postponement of repayment on the loan that contains sufficient information to enable the institution to determine whether the borrower is entitled to the relief requested.	Given the current limitations on what expenses institutions can charge to the Perkins fund, the regulations should not dictate any minimum amounts that schools must assess for late payments. The regulations establish the maximum amount at 20% of the installment payment amount, but we question whether the Federal interest is served by dictating any minimum amounts. Institutions are in the best position to determine whether the assessment of a late charge is prudent.	
15	**Perkins Litigation: 674.46(a)(1)**		Part 674.46(a)(1) should be amended as follows: (a)(1) If the collection efforts described in § 674.45 do not result in the repayment of a loan, the institution shall determine ~~at least annually~~ whether— (i) The total amount owing on the borrower's account, including outstanding principal, accrued interest, collection costs and late charges on all of the borrower's Federal Perkins, National Direct and	Section 674.46(a)(1) provides a laundry list of conditions that must be met before the institution will be required to sue the borrower for the amount of a defaulted loan. One condition is that the institutions must perform an annual review of accounts that are in the default, which is burdensome and time consuming. In order to eliminate this burden, the review period should be based on the institution's discretion. In addition, the amount pertaining to the balance of a loan that the institution of higher education must review and determine if it must sue the borrower must be increased. The amount of $200 is outdated, as it costs far more than $200 to litigate a case in court. Therefore, we suggest that the amount be increased from $200 to $1,000.	

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			National Defense Student Loans held by that institution, is more than $1,000 ~~$200~~;		
16	**Perkins** **Litigation:** **674.46(a)(2)**		Permit (but do not require) litigation if the borrower owes more than $200 and meets certain other conditions. Amend section 674.46(a)(2) as follows: (2) The institution may ~~shall~~ sue the borrower if it determines that the conditions in paragraph (a)(1) of this section are not met.	Since institutions of higher education are required to deposit capital into the Perkins Loan fund, they are motivated to locate borrowers and collect loan funds, as well as to initiate litigation when appropriate. We do not believe that litigation should be mandated. Given the $200 threshold, it may cost the institution more to litigate than to write-off the loan. Institutions should be given the discretion to determine whether litigation is cost effective and appropriate as a collection tool.	
17	**Perkins** **Rehabilitation of Loans** **34 CFR 674.39(a)**	**HEA 464(h)**	Prohibit rehabilitation on loans on which a judgment has been rendered.	Statute and regulations permit rehabilitation on virtually any loan. It is our understanding that legally, a judgment replaces the original promissory note as the enforceable debt instrument and thus should not be considered a loan. The regulation requires schools, which have already expended considerable effort and cost to obtain a court judgment against a borrower, to then ask the court to vacate that judgment if the borrower makes 12 consecutive monthly payments. Vacating the judgment would not only result in additional court and legal fees; it also may be viewed unfavorably by judges, thus prejudicing the outcome of future cases. Further, we fear that vacating the judgment may jeopardize future collection efforts if the borrower subsequently defaults on the rehabilitated loan.	
18	**Perkins Rehabilitation – Requirements** **674.39 (a)(2)**	**464(h)(1)(A)**	Allow a Perkins borrower to rehabilitate a defaulted loan with a single payment or the currently required 12 monthly payments: *Section 464(h)(1)(A) of the Higher Education Act of 1965 should be amended as follows:* (h) REHABILITATION OF LOANS (1) REHABILITATION —	The current loan rehabilitation regulations for Perkins Loans require 12 consecutive monthly payments, while only six consecutive payments are needed to regain eligibility for other Title IV programs. Together, these rigid requirements make it difficult for many borrowers to rehabilitate their loans in order to restore their credit rating or to regain eligibility for Title IV assistance. This provision fails the common sense test — even if a borrower can clear his or her debt with a single payment, the regulations fail to acknowledge that the debt has been paid. The	

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			(A) IN GENERAL — A loan made under this part shall be considered rehabilitated, and the institution that made that loan (or the Secretary, in the case of a loan held by the Secretary) shall request that any credit bureau organization or credit reporting agency to which the default was reported remove the default from the borrower's credit history, if the borrower of the loan — (i) makes 12 on-time, consecutive, monthly payments of amounts owed on the loan, as determined by the institution, or by the Secretary in the case of a loan held by the Secretary; or (ii) makes a single payment equal to the full amount of principal and interest and collection costs owed on the loan.	rule should not discriminate against a borrower who is able to repay an outstanding loan balance more quickly. The statute should be rewritten to allow institutions to make payment arrangements with borrowers that allow borrowers to repay their loans on shorter timetables. Furthermore, a borrower who has defaulted on a loan should be afforded the same benefit as a defaulting borrower who repays the loan within a 12-month period. Under current law, a borrower who defaults on a loan and wishes to repay the loan in full is prohibited from requesting that a credit bureau organization or credit-reporting agency remove the default. Instead of paying in full, the borrower is required to draw out the process by making "12 on-time, consecutive, monthly payments" before the loan is rehabilitated. A borrower who is willing to pay off a defaulted loan in one payment or in 12 or less payments should be afforded the same benefit. In addition, requiring 12 consecutive payments may not be possible in some situations. Because of the rule that requires a Perkins Loan borrower to repay a monthly amount of at least $40, if a borrower has a $200 Perkins Loan, the loan would be repaid within 5 months. Therefore, the loan could not be rehabilitated.	
19	**Perkins – Regaining Eligibility**	**464(b)(1)**	Permit defaulted borrowers who voluntarily make all payments due on past due accounts to regain eligibility for all Title IV funds, not just Perkins Loan funds.	Students who make efforts to rectify their prior errors should be permitted to start again with a clean slate. At this point, the statute restricts this renewed eligibility to Perkins Loans.	
20	**Perkins** **Write-offs CFR 674.47(h)**		Increase maximum loan write-off amount from $5 to $25. Amend section 674.47(h) as follows: *(h) Write-offs of accounts less than $25.* (1) Notwithstanding any other provision in this subpart, an institution may write off an account with a balance of less than ~~$5~~	Current regulations permit institutions to assign loan accounts over $25 to the Department and to write-off loans of less than $5, but accounts between those amounts are not provided for. Given that the current assignment process requires significant documentation, we do not recommend assigning loans in the $5-25 category, but rather believe that schools should be permitted to write them off.	

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			$25, including outstanding principal, accrued interest, collection costs, and late charges.		
21	**Perkins Credit Bureau Reporting** **674.16(i)(1), 674.43(f), 674.45(a)(i)**		Require credit bureau reporting of delinquent loans only "if the school has not already done so."	Schools are required to report loans to at least one national credit bureau at the time of disbursement and to continue reporting until the loan is paid in full. Schools are also required to take certain collection/billing actions prior to reporting a borrower's delinquency to the credit bureau. Obviously, if schools have complied with the original credit bureau reporting requirement, they cannot also postpone reporting the delinquency until after taking the collection/billing actions. The suggested change eliminates the tension between the various regulatory sections.	
22	**Perkins** **Electronic process** **34 CFR 674.50 (c)-(g)**		Have the Department develop and implement an electronic process for assigning defaulted Perkins Loans.	Perkins Loan schools are seeking a streamlined electronic process for loan assignment, similar to the electronic FFELP assignment process. This change would make the assignment process for Perkins Loans more efficient for all parties.	
23	**Perkins** **Calculation of Cohort Default Rates** **674.5**		We recommend that the Department rescind the cohort default method of determining the default and return to calculating the default on the overall Federal Perkins portfolio.	The decision behind using the cohort method was to standardize the calculation of defaults with the Federal Direct Loan Program. The population of the two programs is different, however, due to the eligibility requirements. Students who receive Perkins Loan funds are more needy of financial assistance than Direct Loan borrowers. They are also more prone to withdraw from classes before completing their degree. Moreover, the Perkins Loan Program at many institutions, operates as self-supporting revolving funds receiving minimal new funding each year. The performance of the institution in preventing and correcting defaults, therefore, is better measured on the basis of its total portfolio.	
24	**Perkins Death and Disability**		On November 1, 2000, the Department of Education published its amended regulations pertaining to the death and disability discharges under the Perkins Loan Program	We recommend improving the physician's forms used to certify disability, which is the main cause of confusion for doctors when determining if a borrower is totally and permanently disabled.	

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	674.61		in the *Federal Register*. Some of these changes become effective July 1, 2001, while others are effective July 1, 2002. These changes should not be implemented and that the Department of Education should maintain its current regulations pertaining to death and disability discharges.	If the regulations pertaining to conditional discharge are not rescinded, however, it is recommended that the ED exempt the Perkins Loan Program for several reasons. First, there is no evidence of abuse in the program (only FFEL Program discharges were checked by the DOE Inspector General). Second, colleges and universities, unlike the FFEL Program, bear a significant part of the cost of paying for death and disability discharges, and do not receive reimbursement for these claims. Thus, these institutions already have a strong incentive to exercise vigilance in reviewing and approving death and disability claims. Third, most large colleges and universities receive only a handful of death and disability claims each year. Based on information from cohort institutions, the Perkins program has not experienced the same increase in disability claims as the FFEL Program in recent years. ED should also allow institutions to rely on the NSLDS status of the borrower. If a lender, guaranty agency, or the ED receives an original or certified death certificate and NSLDS reports that determination, the institution or other lenders should not be required to make the borrower's family submit an original or certified death certificate to each lender.	
25	**Stafford Loans** **Repayment - First Payment Due Date** **682.209(a)**		Amend the regulations to allow the first payment due on all loan types to be within 60 days from the repayment begin date.	The first payment on a direct consolidation, PLUS and Stafford and a FFELP consolidation and PLUS loan is due within 60 days of the date the loan is made. The first payment on a FFELP Stafford Loan is due 45 days after repayment begins or resumes. To afford the borrower a "bit more time" to make the first payment on their loans and to standardize the first payment due date on all loans, we propose a first payment date of within 60 days for all loan types. This also provides parity for this provision between FFELP and the direct loan program.	
26	**Repayment- Three-times rule** **682.209(a)(7) (ii)**		Delete "If a graduated or income sensitive repayment schedule is established, it may not provide for any single installment that is more than three times greater than any other installment."	This regulation prohibits lenders/holders from establishing repayment terms, which provides for any one installment exceeding any other installment by more than three times. Borrower's loans have become more complex and in greater amounts and borrower's need the maximum relief possible to avoid delinquency and default. Lenders have attempted to	

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				respond with more flexible repayment terms, however the "three-times" rule has thwarted their efforts.	
27	**Repayment – Borrower Repayment Terms** **682.209 (a)(8)(iv)**		Delete the "written notice" requirement	This regulation allows a borrower to request a repayment term of less than 5 years. This request need not be in writing. However, after the borrower is in repayment, if the borrower wants to extend the 5-year period, it must be done in writing. This creates a level of unnecessary complexity for the borrower. Making this change would coordinate the repayment standards in this section of the regulations. Since the borrower is able to request a yearly change in repayment plans and is not required to put such a request "in writing", the regulations are treating borrowers inconsistently.	
28	**Repayment: Loan Level vs. Borrower level deferments: 682.210**		Provide clear language stating deferments are granted at the loan level, not borrower level. Revise §682.210(a)(1)(ii) as follows: (ii) With the exception of a deferment authorized under paragraph (o) of this section, a borrower may continue to receive, <u>on a loan,</u> a specific type of deferment that is limited to a maximum period of time only if the total amount of time that the borrower has received the deferment <u>on that loan</u> does not exceed the maximum time period allowed for the deferment.	The Department has long interpreted the FFELP regulations to provide deferments on a borrower level rather than on the loan level, even though deferments on Perkins and FDLP loans have been granted on a loan level. For a FFELP borrower, this means all eligible deferment time can be exhausted on one loan. For example, if a borrower gets out of school, utilizes three years of an unemployment deferment, then goes back to school and obtains additional loans, the borrower would no longer be eligible for an unemployment deferment on the new loans. This also provides parity for this provision between FFELP and the direct loan program.	
29	**Loan Pro-ration** **682.203(a) and 685.204(a)**		Eliminate the loan pro-ration for students whose remaining period of enrollment to complete a degree is less than one year.	Students are being deprived of loans to help complete their final term to obtain their degree. Some students have had to obtain an alternative (private) loan to make up for the portion of the federal loan that was no longer available to them due to loan pro-ration. In addition, there is unnecessary work for the aid office to identify which students must have their loans pro-rated and to calculate the amount of the loan. Satisfactory progress standards and aggregate loan limits are already in place to prevent a excessive borrowing	

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			Make pro-ration optional rather than mandatory	The mandatory requirement to pro-rate loans for students whose remaining period of enrollment to complete a degree is less than one academic year, deprives students of large amounts of federal funds and the amount of administrative burden involved in identifying such students, especially if this is interpreted to mean that the school is required to identify students who could have graduated but have chosen to extend their attendance is not needed. SAP standards and aggregate loan limits protect the taxpayer's interest by capping the amount that a student can borrow.	
30	**Loan Limits** **682.203** **685.204**		Increase Loan limits and at a minimum, increase limits for freshman and sophomores.	During the last reauthorization, no change was made to the annual of cumulative Stafford loan limits. While we do not encourage students to borrow any more than they need, the borrowing limits established almost a decade ago are not keeping pace with increases in costs and the decrease in the proportion of costs covered by grant aid. While we would much prefer a significant increase in grant aid, especially for the first years of undergraduate study, we must concede that current annual borrowing limits are now too low. While PLUS loans may fill the need of some (mostly middle- and upper-income) students, there are many others, especially from needier backgrounds, whose parents cannot or will not borrow PLUS loans. In addition, students from families with greater financial strength can borrow up to the cost of attendance, while students from lower-income backgrounds, even with supplemental Unsubsidized Stafford, have to make due with much less. Students whose parents cannot borrow PLUS loans for them (including graduate students) are forced into high-cost private loan programs (if they have good credit or can get a credit-worthy co-signer), or into part time studies. Both of these choices are problematic; the first because the student must try to repay two student loans shortly after graduation (if not also during school), making it more likely that the student will default on one or both; and the second because part-time students, especially on the undergraduate level, tend to run into the	

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				cumulative borrowing limit before finishing their degree program. These students then have a large debt and no way to obtain funds to complete their degree. Without a degree, they are less able to secure a job paying enough to repay the loan. Thus, the logical solution would be to increase annual and cumulative undergraduate borrowing limits each year in response to increasing costs, or to substantially increase federal grants. Graduate borrowing limits should be eliminated to allow students to borrow up to their cost of attendance less other aid, similar to PLUS loan regulations.	
31	**Loan Limits 682.203 685.204**		Allow schools to set annual loan limits	At present, the maximums for freshmen and sophomore students are insufficient to meet the educational costs of attendance. We suggest that schools should be permitted to set annual award limits for Stafford loans, within the aggregate lifetime limits for undergraduates. An annual limit of $5500 for all undergraduates regardless of grade level would be more realistic. Freshmen often have higher costs than upperclassmen due to required computer purchases, yet they currently have the lowest loan limits ($2625). Why $2625? This appears to be an arbitrary limit that is difficult to explain to students. Many undergraduate students are using private alternative loans in order to complete their funding requirements, or are deciding to delay their degree completion indefinitely until they can secure private loans. Private loans are expensive to the student and cannot be consolidated with the student's other educational debts thereby increasing the possibility of future loan default due to multiple payments to multiple lenders. Students tend to pay off private debt before paying on educational loans.	
32	**Death and Disability 682.402**		Waive the implementation of the provisions effective 7/1/02 from the 11/1/00 final regulations, thereby leaving in place those regulations effective 7/1/01. In addition, we recommend that reaffirmation be required regardless of when	During the negotiated rulemaking process, all non-federal negotiators expressed disagreement with the Department's direction for death and disability discharges. The approach taken by the Department and the resulting regulations' complexity will create unnecessary anxiety and confusion for disabled borrowers. These regulations put forward a burdensome process for borrowers and providers. The regulations are a result of concern	

	Regulation	Statutory Authority	Suggested Amendment and/or Regulation	Rationale	Disposition
			the disability discharge occurred (i.e., remove the three year period). We feel the reaffirmation process is successful in helping protect the federal fiscal interest in these situations.	on the part of some that there may be rampant fraud and abuse within this discharge type, however, the Department's own Greg Woods stated in the FY 2001 Performance Plan for the PBO: "We continue to work to determine the true scope of fraud in death and disability claims. To combat false claims, we have changed the information required on the claim form to require the name and license of the doctor certifying death or disability; we are more closely scrutinizing the medical opinions provided to support disability; and we are using the National Student Loan Data System and national credit bureaus to audit the death and disability claim forms we receive. **These efforts have helped us determine that false death and disability claims aren't nearly as widespread as originally thought."** We agree that there is not a widespread abuse problem and voiced that opinion during the neg reg process. We think the new information required from physicians, along with the community's review and updating of the current forms, should be given an opportunity to work. If SFA already has the methodology in place to audit and monitor these claims, as outlined by Greg Woods, along with the lack of abuse uncovered, there is no rationale supporting the massive regulatory changes to the disability discharge process at this time. These regulatory changes are so complex that the Department itself is unsure of how it will implement them. The rationale for the withdrawal of these regulations follows that of Greg Woods' statement in the Performance Plan. Changes to the information derived from the form, better scrutiny by the Department, and the ability for Guaranty Agencies to ask additional questions, is the preferable approach. An additional point to be made is that the Department already has authority to pursue action against those borrowers committing fraud within the program. The Department has stated that many are not pursued by the Justice Department due to the small balance of these loans compared to other cases. We would	

	Regulation	Statutory Authority	Suggested Amendment and/or Regulation	Rationale	Disposition
				urge the Department to pursue those borrowers committing fraud in these and other cases to make clear that fraud within the student aid programs will not be tolerated. We do not want to see the overall population suffer the consequences of complex regulations due to the action of a few.	
33	**Anticipated Graduation date: 682.209 (a)(3)(i)(B) &(C)**		Eliminate the requirement that a lender change the anticipated graduation date (AGD) or separation date when the date provided by the school is in the same month and year as a previously provided date, regardless of whether the lender has disclosed repayment terms to the borrower.	Regulation and current ED guidance, in DCL 96-L-186, Q&A #18, do not require the lender to change the AGD/separation date if the lender has already disclosed repayment terms to the borrower. However, if no disclosure has been sent, the lender must make adjustments to the AGD/separation date even when the new dates are within the same month/year. This required adjustment is administratively burdensome to lenders and serves no useful purpose.	
34	**Return of Title IV Funds - Student Withdrawal** **668.22**	484B	Modify the statue on the return of Title IV funds to allow federally aided students on withdrawal without having to return grant assistance.	This withdrawal can be recorded by ED and if a student re-enrolled and re-applied for Title IV, the student would be subject to return funds if the student dropped out again.	
35	**Return of Title IV Funds** **Late Disbursements 668.22 (e) and 668.164 (g)(3)(i)**	484B (3)	Require the circumstances for late disbursement be limited to withdrawals that occur after the 60% point in time of the period of enrollment or payment period. Clarify when the late disbursement regulations found in the cash management regulations are to be used. Give Financial Aid Officers full authority to make late disbursements.	The Return of Title IV regulations require a late disbursement of any aid for which the student was eligible. Previously, late disbursements were covered in the cash management regulations. The existing regulations were not changed even though the Department changed the policy on the treatment of second and subsequent disbursements. The Department said it changed the guidance for the treatment of second and subsequent disbursement in certain circumstances only, i.e. post-withdrawal disbursement. It is easy to become confused as to what regulation applies in what circumstance. Either mandating or denying these late disbursements could have devastating consequences for individual students, causing them to receive and then immediately repay funds that they may not need, or failing to offer the needed financial support for expenses they have already incurred	
36	**Late**	484B	Promulgate ED guidance allowing for late	ED has provided written confirmation allowing for a late	

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	Disbursements: **"No Fault" Late disbursements: 668.164 (g)(3)(ii)**		disbursements after the "90-day window" currently provided for if the disbursement was due to "no fault" of the borrower.	disbursement to be made after the 90-day window if it is determined that the late disbursement was not the fault of the borrower.	
37	**Disbursement of Funds 668.164(d)(2)(ii)**		Amended section 668.164 (d)(2)(ii) as follows: ii) ~~Minor p~~ Prior award year charges ~~if these charges are less than $100 or if~~ as long as the payment of these charges does not, and will not, prevent the student from paying his or her current education costs.	The ability to apply aid to charges incurred in prior years should not have a dollar restriction. Most institutions' receivable systems apply payments to the oldest charges, and do not discriminate between past due and current charges. Amending this would allow institutions some discretion to allow students to continue their attendance in school and graduate, as opposed to having to stop their studies until their debt has been paid.	
38	**Return of Title IV Funds – costs incurred** **34 CFR 668.22(g)(1)(ii) and 668.22(g)(2)**	484B	Revise the Return of Title IV Funds regulations to allow students to earn aid up to the amount of educational costs incurred for the period of enrollment or payment period. Eliminate "Return to Title IV" altogether and instead allow us to address the issues through Satisfactory Academic Progress (SAP) standards.	The existing late disbursement regulations allow schools to disburse funds to cover documented **educational costs** incurred for the period the student was enrolled and eligible. Return of Title IV Funds regulations calculate aid earned for the period as a percentage of the aid regardless of the costs incurred. The amount unearned (that is to be returned by the school and student) is the lesser of unearned aid or unrealized institutional charges (for the remainder of the period). In many instances the difference between educational costs and institutional costs is significant. Previous regulations for returning aid provided for off-campus living expenses by requiring a separate calculation. The new regulations eliminated this calculation so there are no means for aid officer to take into account the non-institutional educational expenses the student incurred. As a result, the student may be required to return funds to the Department, pay a balance due to the institution and pay for off-campus housing and books without financial aid. To be eligible for federal aid, a student must make satisfactory academic progress. Institutions monitor financial aid recipients' progress through qualitative and quantitative measures as specified by law and regulations.	

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39	**Return of Title IV Funds - Attendance** **668.22(j)(1)(B)**	484B	Let aid administrators handle these cases as the situation warrants with the goal of graduation within the established timeframes in mind. Prohibit the Department of Education from issuing regulations regarding the date of withdrawal for institutions not required to take attendance: Clarify attendance-taking requirements and other issues related to the determination of withdrawal date.	Many institutions do not require faculty to take attendance. This fact is acknowledged in HEA Section 484B which specifically addresses institutions that are required to take attendance (HEA Sec.484B(c)). Yet, the Department of Education forces financial aid officers to use substitutes for attendance records where none exist when a student fails to formally withdraw from the institution. Aid officers are put in the untenable position of having to cajole and plead with faculty to provide some **proof of attendance** for a student to whom they gave a failing grade. The exchange can be particularly unpleasant when the faculty state the failing grade was earned by the student. In these instances the faculty person must be located, the documentation received and the refund calculated all within 30 days of the end of the semester, when most institutions take at least 2 weeks to post grades and produce the necessary reports for determining unofficial withdrawals. This entire process presents an administrative burden unequal to that created by any other regulation. The cost of the time and effort as well as the cost of returning the funds for these students can be a significant burden for institutions, especially our community colleges. As an institution that is not required to take attendance, we are subject to determine the date of withdrawal based on unsubstantiated and oftentimes disputable evidence. Schools that are not required to take attendance by their accrediting agency find it difficult to make the determination of the students last day of attendance. The statute clearly states that the date of withdrawal is the date the institution indicates that the student withdrew, in accordance with institutional policies. As the Department has imposed a more restrictive definition, a change is needed to reinforce the current statute.	
		484B(c)(1)	Clarify that schools that are required to take	The Department has stated that if—<u>in the Department's</u>	

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		(B)	attendance are those required to do so by their certification or licensing board.	opinion—the only way that an institution could meet any agency's requirements is by taking attendance, the institution must take attendance for that population. This interpretation inappropriately expands the statutory requirement.	
40	**Return of Title IV – payment periods** **668.22(f)**	484B(d)(2)	Amend section 484B(d)(2) as follows: (2) ~~i~~In the case of a program that is measured in clock hours, by dividing the total number of hours comprising the payment period or period of enrollment for which assistance is awarded into the number of clock hours ~~–~~ scheduled to be completed in that period as of the last date of attendance or participation in an academically related activity. ~~A)completed by the student in that period as the day the student withdrew; or~~ B) ~~scheduled to be completed as of the day the student withdrew, if the clock hours completed in the period are not less than a percentage, to be determined by the Secretary in regulations, of the hours that were scheduled to be completed by the student in the period.~~	In Report Language accompanying the 1998 Amendments to the Higher Education Act of 1965, it is clear that Congress' intended "scheduled hours" to be used in making determinations of the payment period or period of enrollment completed. This suggested amendment seeks to make it clear that the percentage of Title IV assistance earned by students attending clock hour institutions will be based on scheduled hours attempted as determined by actual attendance records maintained by the institution. Institutions measuring program length in clock hours are all required by one or more members of the TRIAD to maintain accurate and complete records of student attendance and base students' continued eligibility and participation on this and other integrity provisions including satisfactory academic progress. These safeguards should be sufficient to ensure that students will only receive funding equal to what they have earned. Furthermore, this clarifying amendment mirrors the methodology used to make determinations for credit hour institutions and also draws upon existing regulatory definitions of "academically-related activities" used to make withdrawal determinations by non-attendance taking institutions.	(The same language is offered to amend the reg in section 668.22 (f)(1)(ii).)
41	**Return of Title IV funds:** **Leave of Absence** **668.22 (d)**	484B 484B(a)(2)	Institutions should be given the discretion to treat leaves of absence in accordance with their own policies, taking into account student budgets and satisfactory academic progress. Clarify that multiple leaves of absence are	The current ED regulations governing leaves of absence are detailed, prescriptive, and override institutional policies. These regulations prevent repeated leaves of absence – a situation that disadvantages chronically ill students. The Department has interpreted the statute as allowing a student only one leave of absence and has created a complex set of	

	Regulation	Statutory Authority	Suggested Amendment and/or Regulation	Rationale	Disposition
			permitted within the statutory timeframe.	exceptions. Circumstances that would cause a student to request such a leave are often repetitive and it is certainly possible that a student may need to request a second leave. The statute is clear that such leaves may not exceed a total of 180 days in any 12-month period, and does not imply any need for regulatory restrictions.	
42	**Return of Title IV funds : 50% Grant Protection** **668.22**	484B	Amend the statute to provided for 50% grant protection for students who withdraw more than once. Allow institutions to determine if a student should be insulated by the 50% rule	Current regulations treat the neediest students unfairly by demanding that a large sum of grant money be returned even if the funds have already been spent. The student should not have to return more than 50% of total grant funds received. The protected amount should be subtracted at the conclusion of the formula calculation from the amount the student is expected to repay. Institutions are concerned that a small number of students might try to "game" the system by enrolling simply to withdraw early and walk away with grant funds. This would be an optional step for the institution; the institution should have the ability to set a policy that works best for its students.	
43	**Return of Title IV Funds:**	484	A de minimus amount of $100.00 of federal funds that need not be returned by the institution should be established to reflect	To reflect the costs incurred by institutions to go through the return of Title IV process.	

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	De minimus Rule		legitimate administrative costs incurred in this process. The $100.00 de minimus rule should apply to students as well. Establish a $200.00 de minimus rule	 Congress should establish a $200 de minumis amount so that an institution would not be required to return less than $200 of grant funds.	
44	**Deferments** **682.210 (b)(i) and 674.34 (b)(i)**		Align deferment requirements among loan programs (Stafford and Perkins).	We need to get rid of the "patch work " of the regulations as it creates an "administrative nightmare."	
45	**Performance Based Evaluations**		Congress should study the feasibility of performance-based evaluations of institutions of higher education.	This would allow those institutions performing at a high level to be subject to less periodic reporting while those performing below the mark would be held to a higher level of oversight that allows the federal regulatory agencies to ability spend more time and resources where needed.	
46	**Tax benefits –** **Hope and Life-Long Learning**		Shift primary reporting requirement for the Hope and Life-Long Learning Tax credits to the taxpayer.	Reporting correctly on these two tax-credit programs at school that services many transfer students and part-time adult learners, requires us to individually go through the records of each enrolled student and make a judgment on such things as years of	

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	Credits			tax-credit eligible education they have already completed, their status as full or part-time for the purposes of the law, whether they meet the citizenship requirements, and the like. This is sent off to a processing service that makes the notifications. Students who disagree with our judgment see us and as necessary, revisions are made. While a University in the case of a tax-payer audit should certainly be able to provide information to the IRS about whether or not the student's attendance is as claimed, it would be a great simplification not to have to be the primary data gatherer for all enrolled students. The current situation is analogous to requiring day care centers to have to provide information on which parents could qualify for the childcare tax credit. This is also a specific question as to what extent a university should serve as an agent of the federal government in ensuring compliance with federal regulations.	
47	**IPEDS - Reporting**		Require separate reporting of traditional full-time residential day undergraduate programs and those that service part-time, non-traditional students.	The current reporting requirements requires the blurring of very distinct programs and defeats the purpose of gathering the data in such a manner that it is easily comparable among schools.	
48	**Adverse Credit: 682.201 (b)(1)(vii)(C) (2)**		Eliminate the reference to "bankruptcy discharge" in the definition of "adverse credit" for PLUS loan eligibility, and/or revise ED DCL guidance regarding adverse credit so that ED policy does not conflict with provisions of the U.S. Bankruptcy Code. **682.201(b)(1)(vii)(C)(2)** The applicant has been the subject of a default determination, ~~bankruptcy discharge,~~ foreclosure, repossession, tax lien, wage garnishment, or write-off of a Title IV debt, during the five years preceding the date of the credit	Current ED policy regarding the determination of "adverse credit" when determining the eligibility of a PLUS loan applicant may be in violation of the anti-discrimination provisions of the U.S. Bankruptcy Code. Further, it has been recommended that a similar change should be made in 682.410(b)(2) to delete "...the guaranty agency shall charge a borrower an amount equal to reasonable costs incurred by the agency in collecting a loan on which the agency has paid a default or bankruptcy claim. ...". Both of these provisions appear to violate the non-discrimination clause of the bankruptcy code and the bankruptcy references could easily be deleted to bring the regulations in conformance with the code.	
49	**Student Eligibility** **Selective Service Requirements,**	484(n), 484(r), and 487(a)(23)	Eliminate these requirements. At the very least, requirements should be simplified.	There are regulations and statutory requirements that have no bearing on a student's propensity for educational success. These regulations add complexity to the student aid application and process without providing any significant social benefit.	

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	drug offenses & voter registration **668.37 & 668.40**			Of the 10.5 million FAFSA applicants, roughly 11,000 have been found ineligible for student aid (one-tenth of one percent) based on the "drug question."	
50	**"Motor Voter" requirements**	487 (a)	Allow for the electronic distribution of information regarding voter registration. Amend the statute as follows: "An institution shall be considered to have complied with 23(A) of this part if it has electronically mailed to each student enrolled in a degree or certificate program and physically in attendance at the institution, within 60 days prior to the deadline for registering to vote, an Internet address that contains the most recent version of the Federal Election Commission's National Motor Voter Registration Form in states where the National Mail Voter Registration Form is accepted, or a state voter registration form in states not using the National Mail Voter Registration Form. "	There is concern that electronic communication of a form or providing the Internet address to obtain a form would not meet the goal of the current statute. Congress should add a provision to the legislative language so that institutions will have clear direction as to the acceptable methods of distributing voter registration information/material to each student.	
51	**Consolidation: Parity with DL & FFELP Consolidation** **682.201** **682.210** **682.216** **682.402**		Revise current FFELP and/or DL law and regulations to provide all borrowers with equal benefits.	Borrowers who obtain consolidation loans in either the DL or FFEL programs should have the same borrower benefits regardless of which loan program they select. Under current rules, DL and FFELP borrowers have different benefits. For example, under current DL rules: 1) if PLUS loans are consolidated and the student dies, the parent can have the underlying PLUS loans that were borrowed for that student, discharged; 2) spousal consolidated loans can have underlying loans discharged based on false certification, unpaid refunds or closed school; 3) a borrower retains all previous deferment eligibility even if	

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			Provide full parity between the two programs and eliminate the Consolidation Loan Rebate Fee of 1.05% for FFELP lenders.	all of the borrower's loans are paid in full by consolidation; and 4) a borrower is allowed to consolidate loans during the in-school period. Program parity.	
52	**Consolidation: Disability Discharge on Consolidation Loans 682.402(c)(1) (ii) and (iv)**		Revise the regulations to allow for a partial discharge of a consolidation loan in the case of a borrower's total and permanent disability.	Consistency of benefit for borrowers eligible for discharge: Currently, regulations provide for the discharge of a loan due to a closed school or false certification circumstance, even if that loan has subsequently been consolidated along with other loans which are not similarly eligible for this type of discharge. However, for the case of a total and permanent disability discharge, the regulations preclude the discharge of the loan unless all of the underlying loans are also eligible for the discharge. This situation is particularly onerous for the disabled borrower, and serves to punish the individual who would have received the benefit of this discharge on the applicable loan(s) had they simply not been consolidated.	
53	**Forbearance: Simplification 682.211**		Recommend the elimination of the regulatory language "agreed in writing" for all forbearance types except those mandated by statutory requirements. Specifically, revise paragraphs 682.211(b) and (c) as follows: (b) A lender may grant forbearance if – (1) the lender and the borrower or endorser agree ~~in writing~~ to the terms of the forbearance~~, and the lender provides confirmation of the terms of the forbearance~~; (2) in the case of forbearance granted under paragraphs (h)(1), (h)(2)(i), or (h)(2)(ii)(A) of this section, the lender and the borrower or endorser agree in writing to the terms of the forbearance;	The FFELP community continues to advocate further simplification and flexibility in the forbearance process. We recommend the elimination of regulatory language requiring the borrower or endorser to "agree in writing" to the terms of the forbearance. The use of electronic communications has seen a marked increase. By permitting borrowers to request forbearance through convenient methods and to receive notification of the forbearance terms, both the Department of Education and the FFELP community can quickly react to a borrower's personal or financial circumstances by granting forbearance in a more efficient manner. In addition, the statute only requires a written agreement for specific types of mandatory forbearance. For those discretionary and administrative forbearance provisions described in statute, no similar requirement for a written agreement exists. Regulations should limit the requirement for a written agreement to only those circumstances described by statute.	

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			or, (3) in the case of forbearance of interest during a period of deferment, ~~if~~ the lender informs the borrower at the time the deferment is granted that interest payments are to be forborne. (c) A lender may grant forbearance for a period of up to one year at a time if both the borrower or endorser and an authorized official of the lender agree ~~in writing~~ to the terms of the forbearance.		
54	**Administrative: Copies of Promissory Notes: 682.402(g)(1)(i)**		Provide explicit clarification that a true and exact copy of a promissory note is acceptable for claim payment purposes for all claim types. Section 682.402(g)(1)(i) should be revised to read: "(i) The original or true and exact copy of the promissory note" and delete "certified by the lender as true and exact"	Current Master Promissory Note guidance provides for the use of copies. For consistency, ED should provide guidance that allows for the use of true and exact promissory note copies for all loan types, all versions of promissory notes, and all claim types. Only a partial change to correct these inconsistencies was included in the 6/29/01 Technical Corrections (TC) regulations package ("accurate" was changed to "exact"). The FFEL community proposal for 1999 TC also asked for the deletion of the phrase requiring certification by the lender, in order to make the regulations consistent.	
55	**Guaranty Agency Issues:** **Default Aversion Fee – Rehabilitated & Repurchased Loans: 682.404(k)**		Revise current regulations to promulgate agreement reached with U.S. Department of Education providing for the collection of the default aversion fee (DAF) by guarantors in the case of a rehabilitated or repurchased loan (i.e., anything that negates that default). ED guidance was recently received on this issue, however, that clarification only partially resolved the issue nor did it reflect the agreement reached in negotiated rulemaking.	When a guarantor is able to successfully rehabilitate a defaulted loan or it is repurchased by a lender, the guarantor should be able to reverse the original return of the DAF. This was agreed to during negotiated rulemaking.	
56	**Guaranty Agency Issues:**		In Sec. 682.409(a), renumber paragraphs (2) and (3) as (3) and (4), respectively. Insert a new paragraph (2) to read as follows:	A judgment in a student loan lawsuit is a finding by the court that the guaranty agency is entitled to principal, interest, collection fees and attorneys fees that are asked for in the complaint. This	

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	Mandatory Assignment on loans with a judgment: 682.409 (a)(1)(iv)		**682.409 ~~Mandatory a~~<u>Assignment</u> by guaranty agencies of defaulted loans to the Secretary** (a)(1) **** (2) <u>In the case of a loan on which a judgment has been entered against the borrower, an agency may assign the loan if it meets the criteria described in paragraphs (a)(1)(i) through (iii) of this section.</u> * * *	should have no bearing on the assignment of that loan to the U.S. Department of Education. The ultimate goal is collection of the debt. Therefore, guaranty agencies should be permitted to assign a loan, judgment or not, as another effective collection tool.	
57	**Guaranty Agency Issues:** **Reinsurance: 682.412 Ineligible borrowers**		Clarify that ineligible borrower claims are considered "special claims" and are 100% reinsured. Add a new section to 682.404(a)(1)(iii) as follows: (E) For loans on which a borrower failed to establish eligibility as described in 682.412.	With the implementation of "Form 2000" the Department changed the instructions for guaranty agency billing and reduced the reinsurance of ineligible borrower claims from 100% to 98%. Previous longstanding guidance from the Department provided for 100% reinsurance on these claims. Lenders and guarantors are now subject to risk sharing on ineligible claims, even though they have no opportunity to prevent the claim filing. 682.412 states that lenders are to "treat the loan as in default" for purposes of filing a claim; however, ineligible claims are not treated as defaults for any other purposes. Claims are not reviewed as defaults: there are no collection activities except the issuance of a single final demand letter; there is no opportunity, except payment in full, to prevent the filing of the claim with the guarantor; and, no deferment or forbearance options are available. The purpose of reduced insurance/reinsurance is to encourage active default aversion activities. Because there is no opportunity for default aversion activities, reduced insurance/reinsurance is inappropriate for this claim type. Also, consolidation and rehabilitation are not options for borrowers with claims paid due to ineligibility.	
58	**Guaranty Agency Issues:**		Delete 48-hour requirement in the regulations and withdraw DCL G-00-328.	After regulations on this topic were agreed upon during negotiated rulemaking, this provision, which was never discussed, was inserted into the regulations between the NPRM	

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	48-Hour Rule: 682.419(b)(6) and DCL G-00-328		Revise §682.419(b)(6) as follows: (6) All funds received by the guaranty agency from any source on FFEL Program loans on which a claim has been paid, ~~within 48 hours of~~ <u>promptly upon</u> receipt of those funds, minus the portion the agency is authorized to deposit in its Operating Fund;	and Final Rule publications without consultation with the FFELP community. The imposed rule requires a guaranty agency to deposit into its Federal Fund all funds received (minus any portion the agency is authorized to deposit into its Operating Fund) on loans for which claims have been paid within 48-hours of receipt of those funds by the guaranty agency or its agent. The 48-hour period is too brief to be practical in situations where an agent is receiving payments from defaulted borrowers, then remitting those payments to the guaranty agency.	
59	**Guaranty Agency Issues:** **Usage Fees 682.420**		Strike Department interpretation (depending on final guidance issued)	The Department is about to issue guidance on this regulation that could unreasonably penalize those GAs who, prior to the new GA financial model being established, used Federal Funds for assets that are still in use. This is a situation of the Department imposing onerous and unexpected terms of repayment (or usage fee), long after the permitted "borrowing". There are also two problems with the regulation itself, however reasonable interpretation could lessen the unintended harm created by the regulation.	
60	**Lender Issues:** **Due Diligence: 682.411**		Review the lender due diligence regulations in their entirety to establish performance-based due diligence standards.	Lender due diligence regulations need to be reviewed and simplified. Lenders currently follow prescribed due diligence requirements that involve sending letters, making phone calls and skip tracing accounts specifically as outlined in regulations. In addition to monitoring to ensure that these activities occur during specified time frames, regulations also require lenders to ensure that a 45-day gap does not occur between any of the activities. Requiring lenders to adhere to two sets of due diligence criteria and participate in risk-sharing as well is burdensome and unnecessary, particularly when the effectiveness of these techniques in actual collection of the loan has not been established. An intensive effort to examine the current lender due diligence regulations for change should occur, but in the meantime elimination of the 45-day gap requirement would provide immediate relief of an unnecessary burden.	
61	**Lender Issues:** **Skip Tracing Activities: 682.411 (h) &**		Eliminate requirement that a lender contact certain non-specific parties that are identified in the borrower's loan file during address and phone skip tracing activities. Amend regulations to read as follows:	The prescriptive nature of the current skip tracing regulations require the lender to contact entities that can provide very little, if any, useful information in locating the borrower. These "entities" or "individuals" are not good sources of information. The information they have obtained from contacts with the	

	Regulation	Statutory Authority	Suggested Amendment and/or Regulation	Rationale	Disposition
	682.411 (m)(1)(iii)		(h)(1) Unless the letter specified under paragraph (f) of this section has already been sent, within 10 days of its receipt of information indicating that it does not know the borrower's current address, the lender must begin to diligently attempt to locate the borrower through the use of effective commercial techniques. These efforts must include, but are not limited to, sending a letter to or making a diligent effort to contact each endorser, relative, and reference~~, individual, and entity,~~ identified in the borrower's loan file~~., including the schools the student attended.~~ (m)(1)(iii) An unsuccessful effort to ascertain the correct telephone number of a borrower, including, but not limited to, a directory assistance inquiry as to the borrower's telephone number, and sending a letter to or making a diligent effort to contact each reference~~,~~ and relative~~, and individual~~ identified in the most recent loan application or most recent school certification for that borrower held by the lender. ~~The lender may contact a school official other than the financial aid administrator who reasonably may be expected to know the borrower's address or telephone number.~~	student is typically always older than information the current lender has. Schools have minimal routine information available on the parents' address and phone numbers for PLUS loans. In addition, the current regulatory language requiring the use of "effective skip tracing techniques" provides appropriate guidance and protection of the federal fiscal interest.	
62	**Cure Procedures for Lenders and Guarantors** **Insurance/ Reinsurance: Appendix D,**		1. Do not limit cure procedures to the requirement that a borrower must sign a new repayment obligation or make a full payment to reinstate the loan guarantee. As long as the lender/servicer has located the borrower, allow the lender to establish a new first payment due date and re-perform the 270 days of collection due diligence. This would	1. The current regulations are too onerous and severe. They over penalize the lender for errors. They put the lender at the borrower's mercy despite the fact that the debt is legally enforceable. The lender's 'penalty' is the uninsurability of the interest that accrued during the period of time the loan(s) was out of guarantee. 2. When the borrower makes a payment, it is obvious that the	

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	section D(I)(E)(2)		be similar to the "locate cure" except that the lender would be re-performing all collection activities. 2. Retain the current provision that allows the receipt of one full payment to achieve a cure, thus reinstating a loan's eligibility for insurance and reinsurance. However, remove the current requirement that the lender bring a borrower to a current status upon receipt of such curing payment. Instead, allow the lender to apply the payment to the borrower's outstanding delinquency that exists on his/her repayment schedule 3. Remove the 3-year restriction for accomplishing a cure.	servicing violations incurred by the lender have not caused the borrower any harm or confusion related to his/her responsibility for repayment. When a borrower is delinquent and makes a late payment (as would be likely in this case), applying the payment to the due date on the lender's records results in the same treatment for all borrowers who make late payments, regardless of the status of the lender's eligibility for insurance. All borrowers have the same opportunity for forbearance/deferment options meant to remove delinquency and accommodate a borrower's ability to repay; there is no reason to treat the borrowers who make a payment on a delinquent, uninsured loan any differently. 3. The three-year limit is arbitrary. As long as the Promissory Note is legally enforceable, insurance and reinsurance should be available upon the implementation of a cure. Furthermore, the cost to ED and to the taxpayer is not increased with the elimination of the 3-year restriction since the interest accrued during all periods of lost guarantee is never paid in a subsequent claim. ED's current method for determining borrower eligibility for a new loan is inconsistent and flawed because it is tied to the loan status applicable to the lender's eligibility for insurance, rather than to the borrower's default status. 4. Currently, in the NSLDS code instructions, for cases where the loan is temporarily uninsured (or permanently uninsured) because of due diligence violations and no default claim was requested by the lender (i.e., the lender discovered the lost guarantee prior to filing a default claim), the borrower is considered to be eligible for new loans. This is exactly opposite the NSLDS treatment of cases where the loan is either temporarily or permanently uninsured and a default claim was requested by the lender (in these cases, the borrower is considered ineligible for further loans). The NSLDS approach should be to capture both the "out-of-guarantee" status of the loan (if that is important to ED), and the information that a	

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			4. In addition, alter current NSLDS codes to reflect the borrower's ineligibility to receive a new loan in every case where a default has occurred, regardless of whether or not a claim was presented by the lender. 5. Allow guarantors to pay claims if the borrower has died, become totally and permanently disabled, or filed for bankruptcy, regardless of whether or not the loan is out of guarantee (subject to interest penalties).	borrower is in default. In no case where the borrower is in default on a loan should the borrower be eligible to receive more federally insured student loans (regardless of the insurability of the prior loan). A better NSLDS approach would be to keep the loan status as “open” as long as the lender is actively pursuing a cure (i.e., the loan has not been written off as uncollectable), thereby insuring the integrity of the borrower’s ineligible status. 5. Since the lender can no longer attempt to collect the loan from the borrower, the original guarantee should be honored. Interest that has accrued since the earliest violation date would not be paid, which both penalizes the lender for the servicing violations and removes costs associated with servicing violations from ED’s reinsurance liability. 6. A lender should have the option of waiving interest as a customer service if a servicing error has occurred. This waiver of interest, offered as an incentive for the borrower to resume active repayment, does not result in any more financial liability to the Department and the taxpayer than exists as a simple outcome of the issuance of the original guarantee (the lender is still ‘penalized’ that interest since it is written off, and the Department will never be asked to reinsure it). In fact, as a matter of everyday business interactions, defaulted borrowers are offered compromise options that result in the waiver of monies owed, in an effort to recover the majority of the debt. This same option should be allowed between the lenders and their borrowers without any restrictions imposed by the Department. To provide some background on the Department’s objections, ED has stated there is “no basis for treating such a waiver of interest differently from situations in which the lender pays the borrower to cure the loan or makes the curing payment for the borrower;” We disagree with this statement, and contends that there is a significant difference between the lender using its own funds to pay a borrower (or make a payment on his/her behalf), and the lender working with the borrower to come to agreeable repayment terms with the intention of the borrower resuming active and full repayment of the loan.	

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			6. Lenders should be allowed to waive unpaid accrued interest that is not insured in their efforts to cure a loss of guarantee and restore the borrower to an active repayment status.		
63	**General Provisions** **Definitions of eligible student**		Modify the definitions for full-time and part-time students in the General Provisions regulations, as well as revise specific award rules in regulations governing individual programs such as Pell Grants to recognize the increasing use of modular courses and other forms of student-centered education programs.	Current regulations have simply ignored the revolution that is occurring in moving toward student-centered education throughout the entire higher educational system. Increasingly, research is showing that the educational process is enhanced and performance increased by better gearing the instruction to the students and providing them more opportunities to interact in the educational process. Private career colleges are among those that have been at the forefront of the current revolution through such innovations as technology-mediated instruction, modular course design and hands-on experience. However, the current regulations continue to assume the same educational models that were used in the days of industrial schools and drafty old lecture halls. The basic assumptions inherent in the current regulations have a significant impact on a student's eligibility for Federal student aid. For example, the regulations require that a student be enrolled at least halftime in order to be eligible to receive loan assistance. However, the assumption is that the student is enrolled in the same courses throughout the payment period. Increasingly, while a student may take 12 semester hours during the first half of an academic year, those courses may occur in the form of a three-credit module for the first 4 weeks, followed by 2 three-credit courses, and ending with a one-credit and two-credit module taken simultaneously.	
64	**Incentive**	487(a)(20)	Amend the HEA to clarify that the	Institutions of higher education utilize revenue-sharing contracts	

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	Compensation 668.14		prohibition on incentive compensation does not extend to revenue-sharing agreements between institutions and third-party service providers that have no decision-making authority for admissions or financial aid awards. Exempt full time, salaried staff members from the provisions.	for a wide variety of services from third-party contractors. Even where such contracts include payments based on student enrollments or student population, the third-party contractor often has no control over admissions decisions or the awarding of financial aid. In such agreements, the actual scope of the contractor's functions and obligations in any given academic year might depend in substantial part upon how many students enroll for that year. Revenue-sharing contracts therefore permit the institution and the third-party vendor the ability to allocate funds in a manner that compensates the vendor on a basis roughly parallel to the scope and quantity of the required services. The current HEA provision, as interpreted by the Department of Education, unnecessarily restricts such equitable arrangements.	
65	**12-Hour Rule** **668.2(b)(2)(ii) (B)**		Repeal the 12-Hour Rule by statutorily defining "week of instruction" for all educational programs as "a week in which a least one day of instruction, examination, or preparation for examination occurs." Review and modify those rules impeding distance education, including the 12-hour rule.	We strongly agree with the reports of the Web-Based Education Commission and the Distance Learning Demonstration Program that the 12-Hour Rule impedes institutions from offering many high-quality, non-traditional educational programs. There is simply no meaningful way to measure 12 hours of instruction for innovative curricula that combine both what traditionally might be considered instruction and out-of-class work, so there is no distinction between instructional time and "home work." We also believe that measuring "seat time" rather than educational outcomes is a misguided regulatory approach. Moreover, the accrediting bodies and state licensing authorities are best equipped, in our opinion, to measure educational outcomes	
66	**50 % rule:** **600.7**	484 (k)	Eliminate the requirement that more than 50% of an institution's student may not be enrolled telecommunication courses		
67	**Financial Responsibility**	102(b)(1)(F)	Reinstate an institution's ability to count SEOG/Perkins matching funds as non-Title IV revenue.	During debate of the 1998 reauthorization of the Higher Education Act, House and Senate conferees agreed that the definition of "revenue" used to determine a proprietary	

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	90-10 Rule **600.5**		Reinstate an institution's ability to count legitimate institutional scholarships, based on merit, as non-Title IV revenue. Clarify that an institution may count money set-aside by a student (and his or her family) for educational costs before any Title IV funds when determining the institution's eligibility.	institution's eligibility under the 85-15 Rule should not be changed. Instead, the conferees agreed to change the percentage used to determine proprietary institutions' eligibility from no more than 85% of a proprietary institution's revenue coming from Title IV federal grants and loans, to no more than 90% of such revenue derived from Title IV. Under pressure from the Office of the Inspector General (OIG), the Department of Education disregarded the clear intent of Congress and significantly modified the definitions used to define revenue and calculate an institution's eligibility. At the heart of the issue were three forms of non-Title IV funds that the OIG stated should not be included at all in the calculation because they did not represent "in-flows" of cash under traditional cash-based accounting. Under this reasoning, institutional scholarships, which take the form of tuition waivers, are not counted, even if the beneficiaries of such scholarships are chosen by an outside entity independent of the institution. After failing to reach consensus with the higher education community during negotiated rulemaking, the Department published final regulations in October 1999 significantly revising the definitions of revenue to incorporate the OIG's new interpretation.	
68	**Financial Responsibility** **Intangible Assets** **668.171**		The Department's financial responsibility regulations should be modified to harmonize its treatment of changes of ownership with its monitoring of institutions. The composite score analysis should be applied to changes of ownership and *pro forma* financial statements should be required rather than the "same day" balance sheet. Only historic goodwill should be used in determining the ratios and calculating the composite score; additional goodwill booked as a consequence of the acquisition would not be deducted. After the acquisition, this	The higher education community and the Department of Education have gained almost three years of experience in applying the financial responsibility regulations adopted in November 1997 (34 C.F.R. §668.171 *et seq.*). While the regulations have been an improvement over the requirements previously used to measure financial responsibility, it has become evident that they pose an impediment to acquisitions of institutions that could benefit from the added financial strength and management expertise that acquisitions could provide. Under the regulations, goodwill is excluded from the ratios used to calculate the composite score that measures an institution's financial responsibility. This exclusion is based on the	

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			additional goodwill would be recognized on a gradual basis over a five-year period. This treatment of goodwill would be conditioned on the acquirer being creditworthy at the time of the acquisition as measured by the strength factors for its primary reserve and equity ratios.	Department's conclusion that goodwill and other intangible assets generally are not readily available to meet institutional obligations. When an institution is acquired, however, a significant part of the purchase price is typically attributable to goodwill. The acquirer bears the cost of the goodwill in the acquisition as well as the associated transactional and transitional costs. Although the Department does not evaluate the change of ownership itself by using the composite score analysis, the effect of the acquisition – the subtraction of the substantial amount of goodwill that has been booked – could well be to cause the institution or its parent company to fail the composite score test when the required annual audited financial statements are next filed, even if the institution and parent were profitable. As an example, two companies could have composite scores of 3.00 and 1.92, but after a merger could have a composite score of 0.20, well below the required score of 1.5. This would necessitate the posting of a letter of credit that would likely be equal to 50% of the previous year's Title IV revenues. Faced with such a prospect, the acquirer would forgo the acquisition.	
69	**International Students – reporting Requirements**			Any president or chancellor of a campus with relatively large numbers of international students will agree with the strong criticism of the proposal to make the colleges and universities collectors of fees from those students. Imposing this burden irritates a relationship that serves this country very well. After all, higher education ranks as one of our very best exports, for any number of reasons.	
70	**General Department of ED issues**		Ensure that the Department of Education upgrade their services and the skills of their employees.	There are questions as to the quality of the service provided to assist students, their families, and the colleges and universities by the Department. For example, the people who staff the federal answer line (1-800-4FedAid) frequently provide inaccurate and misleading information to callers, thus imposing an additional burden on the campuses to resolve the resultant problems. Then, too, parents need to have access to the required "pin numbers" much earlier in the process than currently occurs.	
71	**General Department Of**		Upgrade and simplify Web sites.	It would be helpful if the Department of Education (DOE) revised their web site to make it easier to follow and include in	

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	ED Issues: **Web Site**			their web site the policies for various programs as well as the significance of award type. For example, Foreign Language and Area Studies (FLAS) programs have more restrictive policies than what is covered in title 34 CFR; Formula type awards do not have automatic carryover but discretionary type awards do according to a DOE Program Contact. This information is not readily available for all users. FLAS programs do not allow health and dental insurance for the fellows. Some Universities require this insurance for the fellows. Schools have to absorb those costs as well as complete additional accounting entries to our accounting system. Facilities and Administrative costs are also not allowed which makes it even more costly to complete these programs. Award notices provide very little information. It does not include information regarding whether expanded authorities are given.	
72	**Department of ED Issues:** **Judicial Review**	432(a)(2)	Amend Section 432(a)(2) of the Higher Education Act to permit institutions to obtain timely court review of agency actions which may adversely impact them.	The Department of Education has in recent years used a provision in the Higher Education Act to persuade some federal courts to deny educational institutions their day in court. The law should be clarified to ensure that unlawful or arbitrary and capricious actions of the Department are subject to the same judicial checks and balances as are applicable to other federal regulatory agencies. Adverse actions of the Department of Education can be fatal to small and mid-sized educational institutions, can have serious adverse economic consequences for institutions of all sizes, can cause the stock in publicly-traded institutions to plummet, and can disrupt the education of thousands of students. Some courts have held in the last several years that a provision in the Higher Education Act denies the courts the power to issue injunctions to stop or postpone the effect of wrongful agency actions. The provision was part of the initial passage of the HEA in 1965, and apparently was intended to bar the attachment of agency funds. Until recently, the provision had not been	

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				interpreted as barring injunctions against Department actions. Effective court review of Department actions is particularly important because the Department can end an institution's participation in the federal student assistance programs without an on-the-record hearing or any impartial third-party review of its actions. It can take across-the-board positions or interpretations that threaten or actually cause enormous monetary damage to institutions and their shareholders. Even in the best of circumstances, the Department can make mistakes or can interpret the law incorrectly. In the absence of a court's ability to enjoin adverse action pending final resolution, all institutions of higher education are at risk of irreparable harm with no prior recourse to the courts.	
73	**General Institutional Questions**		Provide Clarity	While we all agree with the purpose of the Americans with Disabilities Act and other related regulations, I think we also believe strongly in the need for clarity about who or which agency has the responsibility to pay when a deficiency has surfaced. Leaving the issue unclear does a disservice to the affected students and also appears to impose the burden by default on the institutions. We urge clarity about such critical details.	
74	**Campus Administrative Issues:** **Campus Crime Reporting –** **668.46**	485 (f)	The statue and regulations should be rewritten with an emphasis on clear, unambiguous requirements and simplified reporting mechanisms. The goal should be a law that provides students and the public with solid, accurate information about reports of campus crime without the complexity and confusion that makes compliance with the existing law so difficult. It should be written in simple English as well. Other suggestions:	The law imposes significant financial costs on institutions and yields data that is often too difficult for students and the campus community to interpret in a meaningful way. The reporting process is a problem as well. Currently, the crime statistics report to the Department is broken down into 180 cells on a web-based reporting matrix. An additional 600 cells are needed to report incidents of hate crimes. The law also requires the reporting of potential crimes. There are the definitional issues as well, including what is a campus.	

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			• Simplify definitions • Limit who is "campus authority" • ED should provide more guidance • Simplify reporting mechanisms • Publish all campus stats		
75	**Equity in Athletics Disclosure Act (EADA) Reporting** **668.47, 668.41(g) and 668.23**	485(g)	The time period for the preparation of EADA disclosures and reporting to ED (34 CFR 668.41(g)) should be changed to correspond to the time period allowed for the submission of audited financial statements (34 CFR 668.23).	Coeducational colleges and universities that have intercollegiate athletics programs are required under the Equity in Athletics Disclosure Act (EADA) to prepare reports on participation and institutional financial support for athletics. The department has imposed an October 15 deadline for disclosure of the report for the immediately preceding year. By statute, the institutions are then required to submit those reports to the department 15 days later. This deadline can force institutions to disclose and report financial data in their EADA reports that is inconsistent with their final audited financial statements. The deadline should be changed to allow institutions to prepare their EADA report using final audited financial data.	
76	**Teacher Report Cards:**	207(f)	• The law should be changed to require states to publish in their state report supplementary information provided by an institution • Amend the word "sent" in the law to include the option of electronic dissemination of information • ED should convene a negotiated rulemaking process to improve the implementation of Title II • The quartile system established by ED to meet the statutory requirement for "rankings" should be abandoned • ED should not require pass rates that are not stipulated in the legislation, and should negotiate with the community about the methodology to be used in calculating institutional pass rates.	Implementation of the Title II report cards showing the pass rates on state teacher licensure examinations has proven to be far more difficult, complex, and costly to implement than anticipated. We recognize and understand the interest in ensuring that teacher preparation programs are operating effectively. Nonetheless, we do not believe that inaccurate and incomplete information is in the interest of students, institutions, or the public. To minimize the inaccurate impressions that may result from the publication of the required reports, and to reduce unnecessary burden on institutions, we recommend that changes be made in both the statute and the guidelines implementing this mandate.	

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			• The institutional timeline for disclosing and reporting data established by ED must be revisited		
77	**Institutional Audits:** **Requirements for Foreign Schools:** **668.15(h) and 668.23(d)(3)**	498(g)(3)	The statute should be revised to allow ED greater flexibility in determining that another country's accounting standards and governmental oversight of nonprofit and public institutions participating in FFELP are sufficient to protect U.S. interests.	The HEA allows ED to promulgate recertification requirements for foreign institutions that received less than $500,000 from the FFEL program, but does not allow any flexibility in setting audit requirements for foreign institutions that receive more than $500,000. This means that foreign institutions are required to submit financial statements that conform with the Generally Accepted Government Audit Standards (GAGAS). This can be very expensive. We believe it makes little sense to require the University of London to reaudit itself to meet ED's regulatory mandate. Nonprofit and public institutions subject to government oversight in their own countries should not be subject to these additional expenses if ED determines that their accounting standards are comparable to U.S. standards.	
78	**Institutional Audits**		Reduce the required Financial Aid Audit to once every two years for schools found to be in full compliance	It is too much to ask institutions to expend time and resources to audit their programs on an annual basis. Instead, audits can be conducted on a biennial basis with equal control and efficiency. Costs for contracting external audit firms are high and are a financial hardship for growing institutions that have a demonstrated record of compliance. It would be better to allow schools to spend saved money on other aspects that can directly benefit students. Biennial audits are not a totally novel concept. At one time, audits were conducted biennially, and two fiscal years were reviewed during one audit. Let us go back to that process. It makes more sense for all parties, even for the government, for they will need to invest fewer resources into regulatory compliance.	
79	**Institutional Issues –** **L, S and T**		There should be a set of rules for the procedure, so that the institutions and their counsel know what to expect and prepare. The community has not been informed of the formal process for handling a request for reconsideration for review. Rather, the Department seems to be making up the rules	In recent months, the Department has begun terminating the provisional certification of institutions as a response to allegations of regulatory violations. In such cases, the institutions do not have the due process protections that would be provided in an L, S & T action or an emergency action. In fact, the opportunity for reconsideration of the Department's action does not even meet basic standards of procedural fairness.	

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			as it goes along. The designated departmental official should be independent of the initial deciding official, have some experience with the issues, and have some experience in making appeals decisions. The hearing officers who hear the formal appeals of departmental actions could also handle these less formal requests for reconsideration. The designated departmental official should not be able to have what would amount to *ex parte* contact with OGC, OIG, or SFA officials who were involved in making the initial decision. It is simply unacceptable to allow the very same officials who made the initial decision to argue their case with the designated departmental official and to provide responses to the issues raised by the institution in its request for reconsideration. Any communication by either party should be made available to the other.	The loose procedural process makes it easy for the Department to close an institution by revoking its provisional certification. There is a concern that the Department will increasingly use this shortcut to avoid providing any real due process to institutions that are provisionally certified. As institutions may be provisionally certified for a number of reasons which do not reflect on their level of compliance (for example, because of a change of ownership), it is critically important that there be at least a minimum level of procedural fairness upon which institutions can rely.	
80	**Change of Ownership: 600.21, 600.31, and 668.13**	498(e) and (h)	Make the necessary statutory changes to clarify that the ownership provisions in the HEA do not apply to nonprofit public and private institutions.	ED has insisted on applying provisions concerning change of institutional ownership to nonprofit institutions, despite clear expression of contrary congressional intent and the common understanding that nonprofit institutions do not have owners. S. 1882, the Higher Education Act Amendments of 1998, included several provisions to clarify that "ownership" refers to for-profit institutions. Regarding the provisions applying to individuals having "substantial control," the Senate report stated: "It was and is the clear intent of Congress that these provisions apply to those who have an ownership interest in a school…. By definition, nonprofit institutions do not have owners…." Regarding the provisions that require institutions that have undergone a change of ownership to re-qualify for Title IV participation and permitting the Secretary to place such	

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				institutions on provisional certification, the Senate report stated: "Both of these provisions also apply only to for-profit institutions…."	
81	**Change of Ownership:** **668.13**		Amend 34 CFR 668.13 to broaden the exception to the change of ownership provisions to include any change of ownership interest among family members or partners, or transactions which simply redistribute ownership shares among those who are already reported to have an ownership interest. Create an exemption when a change in structure does not create a true change in control of the institution. These changes would refocus the provisions on the types of changes in control that are of concern and would be a more efficient use of Department resources. These changes would also reduce an unnecessary burden on small family-owned businesses.	Under the Department's regulations, a change in ownership and control occurs when a person or company obtains control over a college, including the sale or transfer of the controlling shares of stock, a merger or a division, and asset transfers. Essentially, when these provisions are invoked, the institution is treated as a new institution applying for participation. The institution must provide an audited financial statement, is provisionally certified for three years, and the "new owner" and staff are required to participate in the Department's basic training program on student aid. The current regulations trigger the change of ownership provisions too frequently, and can create a significant expense and risk for the institution. The Department of Education dedicates a considerable amount of resources to reviewing changes of ownership that are not really the types of changes of control which should be of concern. This is particularly true regarding changes of ownership interests among family members within family-owned businesses, between partners, or when parent and subsidiary companies are reorganized. Many times these changes occur because of the illness of a parent or one of the partners, or as part of estate-planning efforts. Triggering the regulatory "change of ownership" provisions has significant costs and consequences. The institution must incur the expenses for a "same day" balance sheet and audit, and is provisionally certified for a period of three years.	
82	**GEAR UP:** **694.10**	404A-G	ED should be instructed to strike Sec. 694.10, and be prohibited from establishing packaging rules.	The final GEAR UP regulations include a provision not anticipated by Congress — to make GEAR UP scholarships "last dollar." This marked the first time that a major federal program departed from the long-standing policy of making federal aid "first dollar," so as to empower needy students with the financial resources to go to college. The regulation is purely	

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				the creation of ED officials. In looking for legal authority to impose this rule, the regulators have cited statutory language that program funds had to be used to "supplement and not supplant" existing early intervention programs. While this is common and appropriate language for programmatic funds, it was never anticipated that this rule would be used to sanction "last dollar" student aid packaging rules for a federal program — and the Congressional staff in both houses that drafted these provisions have confirmed that they never intended this interpretation. Not only is the last dollar provision a bad deal for needy students, it is a bad deal for the GEAR UP program as a whole. The regulation means that any college that accepts a GEAR UP scholarship is now open to a review of its entire financial aid packaging policies by federally authorized regulators. However well intentioned, these regulators will frequently not be in a position to understand the many factors that influenced the distribution of private student financial aid funds. A college accepting a student with a GEAR UP scholarship must also ensure that no outside charity — such as Kiwanis — reduces its aid to that student. Colleges have no such control, nor should they, over these independent charities. The provision also means that GEAR UP scholarship students will no longer be eligible for the host of private "last dollar" scholarships made available by community organizations and foundations. Moreover, the designated regulators for the program are inappropriate. Instead of following the traditional process of program compliance handled by federal employees, the ED took the unusual step of designating GEAR UP program operators as regulators. Under this scenario, if the state of California gives a GEAR UP student a scholarship, it would oversee the packaging policy at any school the GEAR UP student attended. So, if the University of Hawaii accepted a California GEAR UP scholarship student, Hawaii's aid packaging policy would be subject to review by the State of California. As a result of this ill-conceived policy, many colleges have been reluctant to apply for the program, a number of major higher	

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				education associations will not support additional funding, and many states have requested and received waivers from the scholarship requirement—this final move leaves GEAR UP students with no scholarships at all. With early intervention and increased grant aid the two most essential ingredients needed to increase college participation rates, and with an explosion in the number of poor and minority students who will be college age in the next decade, the tragic consequences of this regulation cannot be overstated.	
83	**Single Disbursement:** **682.604 (c)(10)**	428G (a)(3)	Extend the provision now set to sunset on 9/30/02 allowing schools with a cohort default rare for each of the three most recent fiscal years of less than 10 percent to disburse a loan in one installment if the loan is for a period not more than 1 semester, 1 trimester, one quarter or four months	This provision provides the school with flexibility, especially with students attending summer sessions and graduating mid-year seniors, to disburse the proceeds of their loan in a single rather than multiple installments.	
84	**30-day Disbursement delay:** **682.604(c)(5)**	428G(b)(1)	Extend provision, scheduled to sunset on 9/30/02, allowing an institution with a cohort default rate of less than 10 percent for the three most recent fiscal years to disburse a first time – first year borrower's loan proceeds without waiting 30 days.	This allows schools to give first-year, first-time borrowers access to their loan in order to purchase books and supplies, pay housing costs and meet other expenses. Without extension of the provision, many students will face serious financial pressure at the start of their postsecondary education.	
85	**Graduate Assistance in Areas of National Need (GAANN) and Javits….need analysis** **648.51(b) and 650.42(a)**	701(a), 703(a), 713(b)(5)(A), 714(b)	Eliminate the reference to Title IV need analysis in GAANN and Javits in the HEA, and return to pre-1998 law for meeting the need requirement of both programs.	The federal need analysis requirement often causes lengthy delays in processing grant applications. Thus, instead of yielding helpful distinctions among the applicant pool, the requisite utilization of the Title IV need analysis methodology creates massive amounts of paper work for students, institutions, and ED. Comparable HEA graduate fellowship programs, such as the Title VI Foreign Language and Area Studies program, and similar training and fellowship programs at National Institutes of Health, National Science Foundation, and the Department of Defense, carry no such requirement.	
86	**Ability to Benefit Testing Requirements** **668.32(e)(1) and**		The retest requirement should be eliminated.	The 2000-2001 Student Financial Aid Handbook, "Student Eligibility," Subpart J of Part 668 — states, "A student who has taken an approved, independently administered test within the last 12 months may submit the official test-score notification to the school to demonstrate his or her ability to benefit. If the	

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	(2) and subpart J of the FA handbook			school accepts the results of a previously administered test, that school must obtain documentation showing that the test and its administration meet federal requirements. If a student withdraws from school before receiving SFA funds and then re-enrolls more than 12 months after taking the test, he or she must be re-tested, unless he or she now has a high school diploma or equivalent." The requirement to retest a student's ability to benefit adds unnecessary cost and burden to the student financial aid system. There is no reason to expect markedly different scores on subsequent ATB examinations. Major testing companies generally distribute test scores for five years after testing. No federal funds are provided for these examinations. It is unclear why ED has imposed this requirement.	
87	**College Work Study:** **Child Care Definition**	441(c)(1)	Classify childcare services provided to campus employees and students as community service.	The Department maintains that on-campus child-care services serving these clients cannot be considered community service unless they are open to all members of the broader community. However, provision of child care services to employees and students not only benefits the FWS workers, but also facilitates community members becoming students and allows the institution to provide quality and affordable child care to the members of the community who happen to be its employees or students.	
88	**Use of College Work Study Funds**	443(b)(2)(B)	Clarify the conditions under which the Secretary may grant a waiver of the utilization of FWS funds for community service.	Many institutions have a strong commitment to service and incorporate it into their institutional philosophy and program structure. These institutions often have difficulty meeting the 7% requirement to expend FWS funds on community service. This statutory change is suggested to permit the Secretary to recognize schools that have voluntarily undertaken substantial community service activities on their own initiative, and not because of government's mandate. In so doing, the Secretary could avoid penalizing these schools that are unable to meet the federal commitment because community service slots are not available for FWS eligible student workers in the community due to the school's considerable other community service activities.	

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89	**Need Analysis**	472(2)	Clarify that the allowable rental or purchase of a computer may occur before the start of an award year	Such a rental or purchase may often occur prior to the start of the academic year for which the machine is to be used. This interpretation is unfair to parents who purchase a computer in June as a high school graduation gift in anticipation of a September college enrollment.	
90	**Treatment of VA Benefits** **673.5(c)(ix)**	480(b)	Make the treatment consistent for Veterans Educational Benefits (e.g., Chapters 30, 31, 32, and 35 of title 38 and Chapter 1606 of title 10 of the United States Code) whether they are treated as a resource in the determination of eligibility for campus-based aid, or whether they are excluded from eligibility determination.	Veterans Educational Benefits listed above must be counted as a resource in the determination of eligibility for campus-based aid yet are not considered when determining Subsidized FFEL or Direct Loan eligibility. Veterans are excessively penalized by this restriction, as actual benefit calculations are generally not possible and they are subject to retroactive revision. Taxpayer dollars saved on administration/coordination of benefits would most likely offset any increased campus-based aid eligibility. The current rules to eliminate Chapter 30 Montgomery benefits for awarding some types of aid is too confusing. Regulations should be changed to either eliminate all VA benefits in awarding of other aid, or eliminate the exclusion of the Chapter 30 Montgomery benefits.	
91	**Implementation of Regulations**	482(c)	Permit early implementation of regulations.	This statutory change would allow schools to implement regulatory changes earlier than the beginning of the award year, at their discretion. For example, if final regulations are published by November 1 to take effect the following July 1, schools would be permitted to adopt the regulatory practices months prior to their official effective date.	
92	**Implementation of Regulations General**		Provide for more lead-time and flexibility in requiring schools to implement new regulations.	When future regulations are being considered, it would be helpful if the Department of Education provided general rather than prescriptive guidance. Such language allows individual institutions flexibility to comply with the guidelines in ways that are compatible with the circumstances of each institution.	
93	**Implementation of Regulations General:**		The Department should adopt a policy that all new regulatory interpretations, whether through advisory opinions, Dear Colleague Letters, private letters, or other means, will	Once the legislative and regulatory processes are completed, institutions should be able to establish policies and procedures that ensure that they are in compliance. However, too often, questions arise about the interpretation of a regulation.	

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			have prospective effect only, with a reasonable period for institutions to come into compliance. Congress should prevent the Department from enforcing regulatory interpretations that conflict with the clear language or intent of the regulation. The current judicial interpretation of the anti-injunction provision makes it almost impossible for institutions or their associations to challenge the Department's interpretations of its regulations. Congressional action is needed to ensure that institutions have the ability to ensure that the Department fairly interprets its regulations, either by amending the anti-injunction provision or by more clearly constraining the Department's actions.	Sometimes this is because the regulation is not sufficiently specific. Other times, situations arise which simply had not been considered during the regulatory process. In some instances, it appears that the Department attempts to change the clear meaning of a regulation without admitting that it is making a change. When the Department issues subregulatory guidance, it often imposes unreasonable costs on institutions or puts them at risk through retroactive application of the new interpretation. When the Department fails to clarify regulations, however, it places institutions at risk that their good faith attempts to comply may result in significant liabilities, or even loss of eligibility. When the Department issues a private letter ruling to an individual institution, there is no mechanism for making sure that the community as a whole is made aware of the regulatory interpretation. However, the Department will then take enforcement action against other institutions based on the interpretation in the private letter. In other cases, institutions may seek guidance but may be unable to get answers in a timely manner. Finally, the Department often issues subregulatory guidance that has a retroactive effect, rather than giving institutions an opportunity to come into compliance with new interpretations.	
94	**General Issues:** **Regaining of eligibility for Students**	Handbook page 1-2	Establish uniform retroactive treatment for ineligible students who regain eligibility within a payment period	Currently, an ineligible student who regains eligibility during a payment period is eligible for Pell Grants and campus-based program funds retroactively to the beginning of the payment period. However, the same student is eligible for FFEL or Direct Loans retroactively to the beginning of the enrollment period that may include a previous payment period. This means that a student could have a FFEL or Direct Loan for a payment period during which they are ineligible to receive campus-based or Pell Grant funds. A student should regain his or her eligibility for all Title IV programs at the same time.	
95	**Satisfactory Academic Progress:**		Consolidate the various regulations on Satisfactory Academic Progress in one section.	With the various provisions relating to Satisfactory Academic Progress located in different sections of the regulations, it is difficult for financial aid administrators to ensure that they are properly following them.	

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	668.16(e), 668.32(f), 668.34				
96	**Negotiated Rulemaking**	492(b)(2)	Clarify that non-federal negotiators have the opportunity to negotiate the agenda and regulatory issues as part of the process	This statutory change offers clarity in the negotiated rulemaking process. It does not diminish the Department's rights; they may still withhold consensus on any items suggested by the non-federal negotiators, and thereby stop a particular item from being part of the Neg Reg negotiations.	
97	**LEAP**	484B(a)(1)	Remove LEAP from the amount used to determine funds to be returned after a student withdraws.	It is difficult to determine whether state grants actually include LEAP funds. This change ensures that all students are treated equitably.	
98	**Data base match with IRS and INS**	484 (g)(p)(q)	Pursue data base match processes with the IRS and improve method of verifying information for INS and Veterans status.	The amount of administrative work to verify income information could be reduced if the Department of Education could obtain data directly from the IRS. For those students who do not clear the INS database match, the amount of time that is necessary for the individual INS office to review the INS document with Form G-845S is too long. A quicker review system should be implemented and schools should be able to FAX information to the INS. The VA needs to get the updated information from all branches of the armed services as soon as the DD214 is issued.	
99	**Cost of Attendance**	472 (1) and (2)	Clarify when the inclusion of the cost of rental or purchase of a computer can be added to the cost of attendance.	It would be helpful to add the cost of the computer before the student's first day of class.	
100	**Over award tolerances** **673.5**		Use the $300 over award tolerance for all federal aid programs so there is consistency with all federal aid programs. Currently the over award tolerance is different for students with FFEL and/or Direct Loans		
101	**Consolidation Loans** **Single holder Rule: 682.201(c)**	**428C(b)(1)(A)**	Eliminate the statute/law that bars other companies to consolidate loans if those loans are held by a single lender	<u>Notes from a commenter</u>: Having recently completed my pediatric residency training, I am now in the process of making payments on my medical school loans. I borrowed the full amount to put myself through medical school and my total loans amount to approximately $200,000. My monthly payments are about $2300 per month; an exorbitant amount by any standards.	

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				Despite record low interest rates, I am unable to take full advantage of consolidation opportunities because of a law/statute that states that if a single lender holds my loans, I am only eligible for their particular consolidation package. More often then not this package is significantly more costly than consolidation through other available sources. These loans have been bought and sold on numerous occasions throughout their life. I am certainly willing to make all the appropriate payments. But, now, just as I am starting my career, hoping to build equity, buy my own home, invest and save towards my retirement; I am unable to do so, because I am forced to pay a higher loan repayment than would otherwise be necessary. I respectfully submit that all loans should be eligible for consolidation with the organization that is able to offer the lowest payments to the borrower irrespective of whether the loan is held by a single or multiple lenders.	
102	**Teach-Outs**		In the last round of negotiated rulemaking, the regulations concerning attribution of cohort default rates were modified, to limit the circumstances in which the CDR of a closing school are attributed to a successor institution. A similar modification of the regulations on liabilities should be negotiated. The Department should establish a procedure to ensure that proposals for teach-outs or sales of assets are handled in a much more prompt and fair manner, keeping as a high priority the best interests of the students rather than a punitive attitude toward the closed institution.	In the unfortunate circumstance of a school closure, it is in the best interests of all stakeholders for an existing institution to teach out the remaining students from the closed school. A teach-out allows the students to complete their education with minimum disruption, and reduces the cost to the government for forgiveness of loans. However, there are strong disincentives for an institution to conduct a teach-out. Economically, it often makes sense to provide a teach-out only if the institution will be able to continue enrolling students at the location of the closed school. However, because any outstanding liabilities of the closed school remain attached to the physical plant and assets of the closed school, the costs and risks too often foreclose the teach-out option.	
103	**Verification:** **Subpart E 668.51**	484 (g), (p) and (q)	Improve on the timeliness and reliability of data base matches with INS, Social Security and Veterans Affairs.	The current decentralized database matching process is burdensome, often resulting in long delays in the delivery of student aid. Updates to students' status is lengthy, often resulting in the student missing out on limited campus-based institutional	

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				funds.	
			Institute a data base match with IRS	Verification is one of the most time consuming and burdensome requirements schools have. The Department should be verifying income reported on aid applications against tax payer returns. Since the Department is able to confirm citizenship status and social security numbers with those respective agencies, they should also be able to confirm income information with the IRS. This would result in enormous paperwork relief and reduce delays in the distribution of aid to students.	
			Pursue targeted selection of students for verification based only on the findings of quality assurance verification exception data	Data from quality assurance schools, which are already identifying the data elements and types of responses that correlate with misrepresentations by students and families, could inform a new process of selection for verification at the federal level.	